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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/886,197	06/21/01	TSUBOI	S MD5000ND/NIT

000157  
BAYER CORPORATION  
PATENT DEPARTMENT  
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HM12/1109

EXAMINER
ROBINSON, A

ART UNIT	PAPER NUMBER
1616	3

DATE MAILED: 11/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

# Office Action Summary

Application No.  
**09/886,197**

Applicant(s)  
**Tsuboi et al.**

Examiner  
**Allen J. Robinson**

Art Unit  
**1616**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-28 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 7-28 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

Serial No. 09/886,197

Art Unit 1616

The information disclosure statement and preliminary amendment filed June 21, 2001 have been received.

The status of SN: 08/543,351, filed 10/16/95, should be indicated in the specification.

Applicant is reminded that in order for a patent issuing on the instant application to obtain the benefit of priority based on priority papers filed in parent Application No. 07/872,279 under 35 U.S.C. 119(a)-(d), a claim for such foreign priority must be made in this application. In making such claim, applicant may simply identify the application containing the priority papers.

Restriction is required under 35 U.S.C. 121 and 37 CFR 1.142 between the following inventions represented in claims 7-28.

Claims 7-28 are directed to methods for protecting a technical material, such as wood, paper, leather, etc. from insects and fungi attack employing many different types of heterocyclic and non-heterocyclic compounds. Applicants are, therefore, required to elect a single invention of the specific compounds for examination on the merits even though this requirement be traversed. Applicants are also requested to add a claim(s) to the elected invention.

The several inventions above are independent and distinct and one does not require the other for ultimate use. They have different fields of search which are not coextensive.

Further, all the claims read on a multitude of compounds which would require many fields of search that would be undue an burden to the Examiner. For example, 514/256(pyrimidines); 514/222.2(six-member ring containing nitrogen and sulfur); 514/383(triazoles); 514/479(carbamates); 514/341,342,343(pyridines). Therefore, restriction for

examination purposes is deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Robinson whose telephone number is (703) 308-4524.

AJR

October 9, 2001

A handwritten signature in black ink, appearing to read 'Allen J. Robinson', with a long horizontal flourish extending to the right.

**ALLEN J. ROBINSON**  
**PRIMARY EXAMINER**